Hazardous Waste Connection

Compliance Information for Generators in Kansas

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Hazardous Waste Connection



Kansas Department of Health & Environment

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The Hazardous Waste Regulations are Changing

by John Mitchell, Chief, Waste Compliance, Enforcement & Policy

The Kansas Administrative Regulations (K.A.R.) addressing hazardous waste management were last updated in 1999 and at that time KDHE adopted most of the federal hazardous waste regulations found in 40 CFR Parts 260 through 279 as in effect on July 1, 1996. It's once again time for Kansas to update its hazardous waste regulations and several of the changes may affect you.

KDHE has drafted revisions to the K.A.R.s 28-31-1 through 28-31-16. A public hearing on the proposed changes was held on July 10 in Topeka. It is anticipated that the revised regulations will become effective some time during August 2002. The changes being proposed range from minor to significant.

The revised regulations will adopt new rules and changes made in the federal hazardous waste regulations between July 1, 1996 and July 1, 2000. Among other changes Kansas Genera-

tors will be required in K.A.R. 28-31-4(h)(5) to comply with 40 CFR 265, Preparedness and Prevention, and with 40 CFR 268.7(a)(5), which requires development of a waste analysis plan. These additional requirements are intended to minimize the possibility of fire, explosion, and releases of hazardous waste. They will also help ensure the proper treatment of hazardous waste that is prohibited from land disposal.

Several changes are proposed to be made in K.A.R. 28-31-8. Following the effective date of the updated regulations all of the federal regulations in 40 CFR Parts 264 and 265 will apply. Previously, Kansas had chosen to not adopt 40 CFR Part 264, Subparts S and CC as well as 40 CFR Subpart 265, Subpart CC. However, these regulations were enforceable against Kansas businesses by U.S. EPA. A summary of the changes follows:

- Significant changes to the requirements of 40 CFR 264/265 Subpart O have occurred since the last KDHE adoption of these federal regulations. Subpart O now includes a section on integration of the air pollution control Maximum Achievable Control Technology (MACT) standards found in 40 CFR 63, Subpart EEE.
- The changes proposed through the adoption of 40 CFR 264 Subpart S will provide some flexibility for the management of remediation waste to facilities subject to 40 CFR 264.101.
- The proposed changes will also include 40 CFR 264/265 Subpart EE which provides special management standards for munitions and explosive hazardous wastes.

With regard to K.A.R. 28-31-8b, the updated version of this regulation will include the significant changes in the requirements of 40 CFR 266 Subpart H. That Subpart now includes a section on integration of the MACT standards found in 40 CFR 63 Subpart EEE. Subpart M of 40 CFR 266 will provide a streamlined approach for managing munitions waste.

The changes affecting the greatest number of hazardous waste generators in Kansas will be those proposed to K.A.R. 28-31-10. KDHE proposes to increase the annual monitoring fee for hazardous waste transporters by \$50 per year. Also, a \$100 per year annual monitoring fee would be collected from each "Kansas Generator" to

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Kansas Generator's Monitoring Fees Needed to Maintain Services

By Bill Bider, Director, Bureau of Waste Management

One of the recent changes in the Kansas hazardous waste regulations is the new \$100 per year monitoring fee for Kansas generators. Any change in fees deserves some explanation as to why it was necessary. Even though K.S.A. 65-3431(u) authorizes KDHE to establish fees to be paid by <u>all</u> hazardous waste generators to cover the costs of monitoring those facilities for compliance, only "EPA generators" had been subject to previously adopted regulations because adequate funds have been available from other fees and the federal RCRA grant to cover all hazardous waste program costs. That favorable situation has now changed.

Without this fee increase, other collected state fees and the federal grant would no longer meet the needs of this program which receives no state general fund support. This budget shortfall arose over the past year when annual hazardous waste "off-site treatment fee" revenue decreased by about \$200,000. This reduction resulted from the closure of the Aptus/Safety-Kleen incinerator in Coffeyville and the decision of Heartland Cement Company of Independence to stop burning hazardous waste as a secondary fuel. These reduced fees and a federal grant which has remained stagnant for the past decade necessitated a fee increase to maintain the hazardous waste program at the current level of services which is required to accomplish federal goals.

Despite having broad-based statutory authority to collect hazardous waste fees, KDHE has minimized fee collection to meet program needs only. In all cases, fees have been collected below statutory maximums or not at all, as in the cases of Kansas generator fees or permit fees. Recognizing this current budget problem, KDHE had to choose between an existing fee increase or a new fee in an authorized area. It was decided that a new Kansas generator fee would be best for several reasons. First, KDHE performs many inspections at these facilities requiring much time and technical assistance. Also, the number of Kansas generators is large, ranging from 3000 to 4000; therefore, significant revenue can be generated by a modest fee. Finally, other large generators and TSD facilities were already paying all of the other fees currently collected by KDHE.

This fee increase will generate about \$300,000 per year which will make up the current budget shortfall and eliminate the need for additional fee increases in the foreseeable future. If you have any questions about waste program budget matters, please contact me at (785) 296-1612 or at wbidget@kdhe.state.ks.us.

Waste Determinations

By Mark Duncan, Unit Chief, Compliance & Enforcement



KDHE staff frequently receive calls from hazardous waste generators who are confused by waste determination issues. In this issue, we are providing answers to a few of the questions we are commonly asked:

What is a hazardous waste determination? This is the process by which a person determines whether or not a waste material is a

hazardous waste, and therefore, subject to the state hazardous waste statutes and regulations. This is the first step in managing any waste material and is fundamental to the proper management of all waste materials, regardless of whether the waste is determined to be hazardous or nonhazardous and whether the waste will be recycled or disposed.

How do I make a hazardous waste determination? In some cases product material safety data sheets (MSDS) can provide useful information. Frequently however, laboratory analyses must be conducted on a representative sample of the waste. These analyses must be conducted by a laboratory certified by KDHE. You may also use knowledge about the waste from other sources or use knowledge about the process generating the waste. In many cases, both testing and knowledge of the waste generating process will yield the most accurate waste determination. Certain materials are hazardous by being specifically listed in regulation. These are commonly referred to as "listed" hazardous wastes because they appear on the "F-, K-, P-, or U-lists". In the case of some F-listed and all K-listed wastes, it is critical to understand the manufacturing

or industrial process that generates the waste stream. These wastes must be generated by the specific industrial process or meet the exact definition of the listing.

What is adequate knowledge of process? If a generator claims that a waste is nonhazardous based on knowledge of the process generating the waste, then the generator must be able to demonstrate adequate knowledge that the waste is not a "listed" hazardous waste and does not exhibit any of the four characteristics (ignitability, corrosivity, reactivity, toxicity).

For instance, a generator uses a dry powder-coat paint to paint metal parts. The MSDSs for the various paints do not show any of the TCLP heavy metals (toxicity) or ignitible solvents (ignitability) as constituents in the paints. In addition, the generator has test results from the paint manufacturer showing the paint does not contain any heavy metals. In most cases, this information would demonstrate adequate knowledge of process or product used in the process.

Who must make a waste determination? Kansas regulations require that each person who generates a waste determine if the waste is a hazardous waste.

When must a waste determination be made? The waste determination must be made at the time the waste is generated. However, many times the waste determination must be based on a sample of the waste taken after it is generated. In these cases, KDHE allows the generator a reasonable length of time to have the waste sampled and analyzed. In most cases this time should not exceed 30 days. KDHE recommends that waste materials stored on-site awaiting results of a waste analysis be clearly marked with the storage date and labeled to show that a waste analysis or waste determination is pending.

In our next issue, we will explore waste determinations further, and go through the waste determination process step by step.

FOCUS ON..... Technical Guidance on Hazardous Waste Topics



Did you know that KDHE offers a number of written technical guidance documents related to the Kansas Hazardous Waste Management Program. The subjects of these guidance documents often relate to topics of significant interest to waste generators in Kansas. These documents have been prepared by KDHE staff and are updated as necessary to keep them current. All of these documents are available on the department's web site, www.kdhe.state.ks.us/waste. Alternatively, they can be obtained by fax or mail if desired.

A list of the currently available Technical Guidance Documents (and date of most current version) related to hazardous waste follows:

Spent Fluorescent Lamps Containing Mercury (09/2000)
Solvent Contaminated Towels or Rags (07/2000)
Use of Evaporation Units (03/1998)
Petroleum Product Mixed with Water (05/2002)
Management of Used Antifreeze (06/1997)
Closed Containers (03/1998)
Used Oil: On-Site Burning in Space Heaters (12/1998)

by John Mitchell, Chief, Waste Compliance, Enforcement & Policy

HW 99-01	Used Oil Generators (08/1999)
HW 00-01	Used Oil Collection Centers (07/2000)
HW 01-01	Notification Requirements for Large Quantity Handlers of Universal Waste (01/2001)
HW 02-01	Waste Medical and Photographic Film (05/2002)

The Bureau of Waste Management also has some Bureau Policies addressing the following hazardous waste topics:

BWM 97-03 Criteria for Determining when a Person

is an Operator of a Hazardous Waste

	TSD Facility (12/1997)
BWM 98-01	Military Munitions Rule (02/1998)
BWM 98-04	LDR Paperwork Requirements (10/1998)
BWM 00-03	Supplemental Environmental Projects (07/2000)
BWM 01-01	Storage Time for Universal Waste Lamp Processors (05/2001)

These guidance documents are intended to be of help to you in understanding various aspects of the hazardous waste regulations. If you have any questions about any of the subjects covered, please feel free to contact me directly at 785-296-1608 or by e-mail at jmitchel@kdhe.state.ks.us.

HW Regs are Changing

(Continued from Page 1)

help off-set the costs incurred by KDHE each year in work related to this class of hazardous waste generator.

KDHE is proposing to revoke K.A.R. 28-31-11 because the Perpetual Care Trust Fund was abolished by the legislature in 1999.

Finally, KDHE is proposing to add a new section (e) to K.A.R. 28-31-16. This new section would prohibit the disposal of used oil by discharge into any sewer, storm drainage system, surface or groundwater, or by deposit on or under land. While the existing federal regulations do not allow used oil disposal in any of these ways, there is no explicit prohibition. The proposed change will provide needed clarification.

If you have questions about the proposed changes to the Kansas hazardous waste regulations or about these regulations in general, please feel free to contact us. We will be glad to help you better understand the requirements applicable to your situation.

isit www.kdhe.state.ks.us/waste to download the Hazardous Waste Generator Handbook 2002; HW Technical Guidance Documents and the Kansas Hazardous Waste Statutes and Regulations. Also available on the website are:

- Kansas Hazardous Waste Transporter Registration form
- Kansas Used Oil Transporter's Registration form
- Hazardous Waste Variance Request form
- Notification of Regulated (HW) Activity form and instructions
- Off-Site Hazardous Waste Treatment Fees Reporting form

www.kdhe.state.ks.us/waste www.kansasdontspoilit.com

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Upcoming Events

August 27 - 28, 2002 - Kansas Environment: Focus on the Future - an environmental conference for businesses, industries, communities, consultants, and others interested in the Kansas Environment, Capitol Plaza Hotel and Maner Conference Center, Topeka, Kansas. Call Ricquelle at 785-296-6603 for registration information.

☎ Important Hazardous Waste (HW) Program Phone Numbers

KDHE - Bureau of Waste Management	KDHE - District Office Inspectors
Director Bill Bider 785/296-1612	Northeast - Lawrence
EPA ID numbers David Branscum 785/296-6898	Southeast - Chanute
HW ComplaintsLynda Ramsey 785/296-0681	North Central - Salina
HW Reg Info George McCaskill 785/296-1606	South Central - Wichita
HW Generator InfoJohn Mitchell 785/296-1608	Northwest - Hays
HW Transporter Info Linda Prockish	Southwest - Dodge City
Newsletter ContactJohn Mitchell 785/296-1608	KSU Pollution Prevention
	or toll free for long distance